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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/595,964

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Jeffrey D. Edwards

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EXAMINER

CAMPBELL, VICTORIA P

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

02/18/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|--|---|--|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/595,964</p> | <p>Applicant(s) EDWARDS, JEFFREY D.</p> | |
| | <p>Examiner VICTORIA P. CAMPBELL</p> | <p>Art Unit 3763</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-33.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments fail to overcome the previously presented rejection. Regarding applicant's argument that Mazaury et al do not teach the use of a coil, the examiner disagrees and draws applicant's attention to part 3, which is a coil. Regarding applicant's argument that the device of Mazaury et al is not capable of producing substantially rectangularly shaped magnetic fields, the examiner disagrees and notes that Mazaury et al disclose in column 7 the duration of one impulse. The examiner notes that an impulse is an near-instantaneous and large increase in energy. The Mazaury et al reference discloses this impulse is sustained for 0.625 ms and then released, which would cause a near instantaneous decrease in energy. Thus, the impulse, sustain, and release forms a pulse having greater height than width if graphed and is thus substantially rectangular. Regarding applicant's argument that Mazaury et al is silent regarding the active portion being different from the inactive portion. The examiner disagrees and notes that the active portion, when the device of Mazaury et al is turned on, produces a plurality of successive filed pulses to create an electromagnetic field packet. Furthermore, the examiner notes that when not in use, the device is inactive. Mazaury et al teach in column 7, lines 36-38 that the treatment was administered for 30 minutes at a time, 2 times per week, for 3 months. The examiner notes that because the treatment lasted only 30 minutes (active) and was only performed once a day, even if the treatments were given on consecutive days, the period between treatments (inactive) is longer than the duration of the active portion. Regarding applicant's argument that Mazaury et al do not teach a solid-state switching device, the examiner notes that in the previous rejection, it was indicated that use of a solid-state switching device is obvious to one having ordinary skill in the art for operation of this type of device. The examiner notes this is especially obvious considering the use of a printed circuit board (7) as the basis for the electrical part (2). Regarding applicant's argument that Mazaury is silent with regard too packets of frequency pulses and duration of individual pulses, the examiner disagrees and notes that a packet of frequency pulses can be the entire duration of use of the device. Further, the examiner notes that Mazaury et al disclose the duration of individual pulses in Column 7, line 44. Regarding applicant's argument that Mazaury et al disclose the need for "at least 50 cm" between the antennae and the patient, the examiner notes that the specification further states "preferably 0.5 to 15 cm, notably 1 to 5 cm, and particularly 1.5 to 3 cm." The examiner believe the phrase "at least 50 cm" is misleading and taken out of context and that, based on the example of Mazaury et al at Col. 7 lines 46-47 that states "spacing between antennae and the zone to be treated: 2 cm", the device of Mazaury et al need not be placed "at least 50 cm" from the patient.